

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**



Application No. 13264, of Francis and Marquerite Smith, pursuant to Sub-section 8207.2 of the Zoning Regulations, for special exceptions under Sub-sections 7104.2 and 7105.2 to change a non-conforming use from a recording studio, first floor and basement, to general offices for a law firm and to extend this use to the second and third floors, in an R-5-B District at the premises 1735 - 20th Street, N.W., (Square 110, Lot 23).

HEARING DATE: June 18, 1980

DECISION DATE: July 2, 1980

FINDINGS OF FACT:

1. The subject property is located on the east side of 20th Street between R and S Streets, N.W. and is known as premises 1735 - 20th Street, N.W. It is in an R-5-B District.

2. The subject site is twenty feet wide and ninety feet deep. It is improved with a three story brownstone row dwelling with an English basement. The site is rectangular in shape. There is a ten foot public alley to the rear of the site. Three parking spaces are available in the rear yard.

3. To the north and adjacent to the site on the south-east corner of 20th and S Streets there is a seven story apartment building known as Chateau Thierry. To the east there is an intersection of two ten foot wide public alleys followed by the rear of several apartment houses and Frasers Stables in the R-5-B District. To the south is the four story Nelson apartment house followed by Carver's television repair shop, in the R-5-B District. To the west is Twentieth street, a one way street northbound with a ninety foot wide right-of-way, followed by the rear of People Pickle Deli, Earthworks Headshop with an upstairs apartment, row dwellings, single family occupied, a beauty salon, and an apartment house in the C-3-C District.

On the same side of 20th Street as the subject property, there are approximately five apartment houses and four townhouses. In the four townhouses including the subject property, there are commercial uses with a residential use above. On the southern end of the street is a large restaurant with parking spaces. Directly across the street from the subject site are basically the rear entrances of commercial properties fronting on Connecticut Avenue.

4. The subject structure was built in 1885. Records in the Central Permits Branch show that certificate of occupancy No. B-6183 was issued September 25, 1957 for a recording studio to be located on the first floor and basement.

5. The Rawdon Smith Associates, Inc., the applicant's business name, an audio tape duplicating service, has operated in the basement and first floor of the subject premises since 1957. A sound recording studio is located within the basement, with offices on the first floor. The second and third floors have been occupied by the owner-applicant's and is presently occupied by one owner.

6. The basement of the subject property is sectioned off into studio rooms, a one-half bathroom and utility room. There are entrances in the front and rear. The first floor contains three rooms and a one-half bathroom. The second floor is a self contained apartment with kitchen and bath. The third floor has three rooms and full bath.

7. The applicants seek a special exception to change a non-conforming recording business use located on the basement and first floors of the subject premises to a law office, basement and first floor; and further extend the law office use throughout the remainder of the building to include the second and third floors.

8. The proposed law office use which would occupy the entire building specializes in telecommunications. The office will operate from Monday through Friday, from 9:00 a.m. to 5:30 p.m. The firm will employ five attorneys and seven staff. Two of the attorneys will drive to work. All other persons will use public transportation. It is anticipated that no more than ten visitors would be at the proposed law office at any one time. Very little client traffic is expected at the site since the majority of the clients are from out of town and most of the firm's business is done by telephone or telex. The proposed law firm has no plans to alter the exterior facade of the building or to make structural changes.

9. Sub-section 7104.2 of the Zoning Regulations states that a non-conforming use may be changed to a use which is permitted in the most restrictive district in which the existing non-conforming use is permitted with BZA approval. Sub-section 7104.2 is further governed by Section 7109. The most restrictive district in which a recording studio is permitted is the C-1 District. A law office is also permitted in a C-1 District. The requested change in non-conforming use meets this section of the Regulations.

10. Sub-section 7105.2 of the Zoning Regulations states that if approved by the BZA, a non-conforming use may be extended to other portions of a structure devoted to such use provided no structural alterations are made, and no other structure is involved in the extension of the non-conforming use. Sub-section 7105.2 is further governed by Section 7108. No other structure is involved in this application and there will be no structural alterations.

11. The applicant testified that the house has been on the market as a family residence or doctor's office and residence. There have been no offers to purchase. The applicant argued that the subject 1700 block of 20th Street is not truly a residential street because of the presence of the non-conforming uses and the large restaurant with a parking lot. Also, across the street are the rear entrances of commercial establishments that front on Connecticut Avenue. The many commercial uses on 20th Street invite much commercial traffic. The applicant further testified that to convert the house to condominiums would be cost prohibitive and would destroy the character of the building. There is no separate entrance to the second and third floors. The only access is from the original stairway located in the middle room of the first floor on the wall opposite the main entrance to the building.

12. Prior to the decision on the application, the applicant submitted evidence that the property had been advertised for sale on twelve occasions between February 8, 1980 and June 5, 1980. The applicant submitted a study of an architect that it would cost about \$130,000.00 to convert the subject building to a four unit condominium. Another architect estimated that to convert to five complete units would require a renovation cost between \$200,000 to \$250,000.00.

13. The Office of Planning and Development, by report dated June 17, 1980, recommended approval of the change of a non-conforming use in the basement and first floor, but not the extension of the law office use to the second and third floors. In its report, the OPD stated that the change of non-conforming use from a recording studio to the described law office, to be located on the basement and first floor, although not a neighborhood facility will not be objectionable to or effect adversely the present character or future development of the neighborhood. The OPD was of the view, that this particular law office use has a similar level of operating intensity as the recording studio. The OPD did not support the proposed extension of the law office use through the remainder of the structure. The OPD was of the view that this would be an impairment of the purpose, intent and integrity of the Zoning Regulations as it relates to the designed function of the R-5-B District and the City's policy to preserve its residential components. The Board so finds.

14. The Dupont Circle Citizens Association recommended that the application be denied on the grounds that the property could be put to a residential use in keeping with the purpose for which the subject R-5-B District was designated.

15. There were letters, of record, from property owners in the immediate neighborhood in favor of the application based on the uniqueness of the subject property.

16. Advisory Neighborhood Commission - 2B opposed the application. It reported that the property is located in an R-5-B District and that it has been the consistent position of the ANC that buildings in this district should not be put to any other use but residential. In this instance, the property is a townhouse which is quite suitable for either a single family dwelling or separate condominiums or apartments. The ANC rejected the argument that the present owners would be unable to sell it for a handsome price as residential property. The property itself is adjoined by residential uses on both sides. The partial use of this building as a recording studio is a non-conforming use. The continuation of a non-conforming use in a residential area should not be encouraged. The ANC acknowledged that Sub-section 7104.2 of the Zoning Regulations allows change of a non-conforming use to another such use in certain situations. However, the language of that section clearly does not obligate the Board of Zoning Adjustment to permit such a change. The ANC is similarly concerned about the extension of the non-conforming use to the second and third floors of the building. These floors have been used as a residence and the ANC is strongly opposed to their conversion to office use, which would remove more units from the residential stock in the area.

The encroachment of office space into residential areas was of the utmost concern to the ANC. First, given the housing shortage, the ANC considered unjustified the use of buildings for offices when residential use is feasible. Second, encroachment of this sort sets a dangerous precedent. The ANC has seen the entire character of a block change because of the piecemeal granting of special exceptions. The residential neighborhood in which this property is located cannot take the chance of accommodating office use which may encourage further attempts at introducing non-residential uses and which may conceivably lead to pressure to rezone the area at a later time if the neighborhood become sufficiently non-residential.

17. The Board is required by statute to give "great weight" to the issues and concerns of the ANC. In addressing these concerns, as well as those of the Dupont Circle Citizens Association, the Board must first emphasize that the relief sought herein is by way of a special exception and not a use variance. The applicant is not required to show that the property cannot be used for residential purposes, but rather that the applicant complies with Sub-sections 7104.2 and 7105.2 of the Zoning Regulations. The Board finds for the reasons recited in Finding Nos. 9 and 13 that the change of the non-conforming use on the basement and first floor can be granted and for reasons stated below the extension to the second and third floors should not be granted. Neither conclusion is predicated upon the fact that the subject property cannot be used for residential purposes. As to the issue of precedent, the Board has consistently stated that it will decide each application based on the facts presented and the record before it, and the granting of one application does not guarantee that subsequent applications involving different property, and thus different facts, will be granted.

#### CONCLUSIONS OF LAW:

Based on the record, the Board concludes that the applicant is seeking special exceptions, which require a showing that the applicant has complied with Sub-sections 7104.2 and 7105.2 of the Zoning Regulations. For the reasons recited in Finding Nos. 9, 13 and 17, the Board concludes that as to the special exception to change a non-conforming use from a recording studio, first floor and basement, to general office for a law firm, the applicant has met the requirements of Sub-section 7104.2 and that the special exception can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property.

As to the special exception to extend the proposed use to the second and third floors, the Board concludes that such extension will be objectionable, as evidenced by the concerns of the DCCA and the ANC in Finding Nos. 14 and 16. The Board notes that no housing units are lost by the change of use in the basement and first floors. The Board further concludes that the extension of the proposed law offices use to the second and third floors of the subject property is not in harmony with the general purpose and intent of the Zoning Regulations. The Board has addressed the concerns of the ANC.

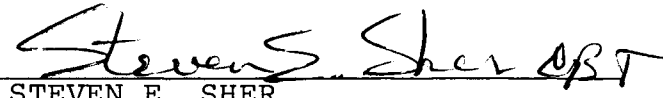
Accordingly, it is ORDERED that the change of the non-conforming use from a recording studio, first floor and basement, to general offices for a law firm is GRANTED and the extension of the law office use to the second and third floors is DENIED.

VOTE: 5-0 To GRANT the change of the non-conforming use,  
(Charles R. Norris, Connie Fortune, Ruby B. McZier,  
William F. McIntosh and Leonard L. McCants to GRANT).

VOTE: 4-1 To DENY the extension, (Charles R. Norris, Connie Fortune,  
Ruby B. McZier and William F. McIntosh to DENY;  
Leonard L. McCants OPPOSED).

BY ORDERS OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 25 AUG 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.